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09/971,797	10/05/2001	Michael Kauschke	34303/49	3584

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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/971,797

Applicant(s)

KAUSCHKE ET AL. 

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12 and 14-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 14-22 and 24-32 is/are rejected.
- 7) ☒ Claim(s) 23 and 33-35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See Paper No. 5 numbered paragraph 6.

A dependent claim must further limit the recited limitations to which it is dependent to. Otherwise, the recited dependent would not only be redundant, but also confusing. In present situation, claim 10 would appear to an alternative characterization of basically the same limitation. If it is Applicant's contention that, this claim further limit claim 1, it is suggested for Counsel to provide an actual example where the limitation in claim 1 step (B) would not necessarily have the recited characteristic in claim 10.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 10, 12, 14-16, 19-21, 24-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lunn et al (US 4,999,235). See the attached magnified print out of figure 2 and column 3 lines 22-32. Note this figure is an actual “*optical micrograph*” of a non-woven fabric.

D_y (edge to edge) is 13 mm; D_x (edge to edge) 17 mm

D_y (center to center) is 24 mm; D_x (center to center) 30 mm

D_y (center to edge) is 20 mm; D_x (center to edge) 31 mm

(Vertical to Vertical) $_y$ (edge to edge) is 28 mm;

(Horizontal to Horizontal) $_y$ (edge to edge) is 42 mm or

(Horizontal to Horizontal) $_x$ (edge to edge) is 35 mm.

6. Claims 1-3, 10, 12, 14-16, 19-21, 24-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Marmon et al (US 6,465,073) as evidence from the teachings of Abuto et al (US 6,096,668). See the whole disclosure.

It is taken that, the term “*poly(monoolefin)*” reads on an elastomeric/elastic metallocene-catalyzed polyolefins disclosed by Morman et al as evidence from the teachings Abuto et al (col. 6 lines 36-65). Abuto et al teaches polyethylene

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elastomer, polypropylene elastomer, etc. as examples of elastic/elastomer polyolefins.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 10, 12, and 15-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over France 2,411,260.

With respect to claims 1, 3, 10, 15 and 26-27, France '260 teaches, in one embodiment illustrated in example 1, forming a filamentary non-woven fabric, the filament being continuously and randomly deposited onto a conveyor belt (page 5 full paragraph 2, see US Patent 3,542,615 for details); passing the web to a pair of embossing rolls having a raised bonding configuration, wherein, each the projecting parts of the raised bonding configuration comprises a major axis and a minor axis, and having a relative distance ratio between horizontal distance (d) and vertical distance (d') of around 1.3:1 (page 4; page 6 full paragraph 2-3; figures 2-5); and, bonding the web such that the *"major axis of the projection parts parallel to the machine direction"* of the non-woven fabric, thereby forming a bonded web having properties that are *"very anisotropic"* (page 9; example 1). Although not explicitly disclosed, the *"very anisotropic"* non-woven fabric in this example must NOT have equal tensile strength and equal percent elongation in a

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cross-machine direction as compared to a machine direction of the web, because the bonding areas between the two directions are not equal. Note the ratio (d/d') is around 1.3. Moreover, as clearly illustrated in figures 2-5, the bonding pattern density in the horizontal and vertical directions is substantially uniform.

With respect to claim 2, since the ratio of the vertical distance (d') and horizontal distance (d) or vice versa of the projection parts ranges from about 1:1.3 to about 1:5 (page 8 lines 1-5), the relative total bonding area between horizontal and vertical directions must inherently either fall within or overlap the recited range in claim 1.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products."** In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

France teaches using rayon-type materials in making a non-woven web, but does not appear teach using a poly(monoolefin) material for making the non-woven web. However, it would have been obvious in the art to use a poly(monoolefin) material for making a non-woven web in a process taught by France '260, because it is a notoriously common practice in the art to interchangeably use a rayon-type material and a poly(monoolefin) material for making a non-woven web.

With respect to claim 4 and 7, see figure 5.

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With respect to claim 5, page 6 last paragraph, particularly last 4 lines.

With respect to claims 16-22 and 24-25, these claims are essentially repetitions of various combinations or alternative ways of characterizing above rejected claims, for the same reasons set forth above, this claim is taken to be anticipated by France '260.

9. Claims 4-5, 8-9, 17-18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn et al (US 4,999,235) or Marmon et al (US 6,465,073) as applied to claim 1, 16, or 21 above in numbered paragraph 5 or 6.

Since recited bonding configurations are conventional in the art; and since one in the art would have readily recognized and appreciated that segmented bonding configurations other than linear bonding configuration can also be effectively be used in the process of Marmon et al, these claims would have been obvious in the art.

Allowable Subject Matter

10. The following is a statement of reasons for the indication of allowable subject matter:

Although the recited bonding configuration recited in claim 23 and 33-35 are known per se in the art, there is no motivation in the art to use the configuration recited in this claim to any of the above references.

Response to Arguments

11. Applicant's arguments filed on 01-20-04 have been fully considered but they are not persuasive.

At the outset, the term "*poly(monoolefin)*" is taken to require a polymerized single component olefin. Therefore, this term is assumed to preclude a copolymer of olefins or a blend of polyolefins. However, this term does not preclude an elastic/elastomeric polyolefin such as an elastic polypropylene. Moreover, Counsel has indicated during a telephone interview of his intention to amend all independent claim by replacing "*non-elastic nonwoven*" with a nonwoven of poly (monoolefin) filaments. However, claim 21 does not require using "*poly(monoolefin)*". In light of the telephone interview, it is assumed for a moment that this claim requires using "*poly(monoolefin)*". If not, then this claim will be rejected as being anticipated by the French publication.

Counsel argues on page 10 full paragraph 4 that, the presently recited claims require filaments of a poly(monoolefin), thereby a resultant web is non-elastic. It is respectfully submitted that, Counsel's argument is not commensurate with the scope of the recited claims. It is true that, the presently recited claims require using filaments of poly(monoolefin). However, this limitation does not necessarily indicate that, a resultant web is non-elastic, since poly(monoolefin) reads on elastic polyethylene or elastic polypropylene. Therefore, this limitation fails to define over an elastic polyolefin fibrous web taught by Marmon et al.

Counsel argues on page 11 full paragraphs 1-2 that the Marmon et al patent does not teach applying bonding pattern to form a web having "*a total bonding*

area along the second direction greater than along the first direction” or “the bonding points form “a uniform pattern of bond density in the first direction different from the uniform pattern of bond density in the second direction” as required in claim 1. Simply because Marmon et al does not explicitly apply the same terminology as Applicant’s claimed invention, it does not necessarily mean that, the claimed invention is absent in the teachings of the Marmon et al patent. As correctly noted by Counsel, Marmon et al teaches reducing a stretchability of an elastic web in one or more directions by applying bond lines to desired directions. Equally important, Marmon et al teaches that, “This variation in size and spacing of segments 22 for successive bond lines 21, produces a region 20 of a material with a variable stretch profile 25 ...”. Moreover, as illustrated in figures 4A-6B, the bonding density in the MD and CD is clearly different. Also see column 3 line 43 to column 4 line 4 and column 12 line 51 to column 13 line 26, particularly in reference to “variable bond lines”.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on “inherency” under 35 USC § 102, on prima facie obviousness” under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO’s inability to manufacture products or to obtain and compare prior art products.” In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).**

Counsel argues on page 13 that *“the bonding areas 38 (formed by the individual rectangles 40, 42) show a large degree of irregularity and non-uniformity. ...*

More appropriate measurements might be from one horizontal rectangle (center or edge) to another horizontal rectangle (center or edge) or from one vertical rectangle to another vertical rectangle.” It is be noted that, the recited independent claims (except for independent claim 16) read on any bonding pattern where bonding area/density/distance in one direction is different (**no matter how small the difference**) from bonding area/density/distance of another direction. Moreover, the presently recited claims do not remotely require appropriate measurements for determining bonding areas, bonding density, bonding distance, etc. In any event, to meet Counsel’s requirement, more measurements were made. Attached is a copy of an exploded view of an optical micrograph shown in Figure 2 with measurements suggested by Counsel. The measurements are as follow: (Vertical to Vertical)_y (edge to edge) is 28 mm; (Horizontal to Horizontal)_y (edge to edge) is 42 mm or (Horizontal to Horizontal)_x (edge to edge) is 35 mm. These measurements clearly illustrate that the recited bonding pattern reads on the bonding pattern taught by Lunn et al. As for Counsel’s argument regarding the irregularity and non-uniformity of the bonding areas shown in figure 2, it is respectfully submitted that, this cannot account for a difference of 25% (i.e. $(35-28)/28$) or 50% (i.e. $(42-28)/28$).

Counsel argues on page 14 that a French publication discloses a conversion of an anisotropic web into an anisotropic web. It is true that, it is desired in the French Publication that, an anisotropic web is being converted into an isotropic

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web. However, in a comparative example 1, the French publication also teaches a "very *anisotropic*" pattern bonded web being formed when "[A] a web was bonded, having its major axis of the projection parts parallel to the machine direction of the nonwoven web that was uncompacted". See full paragraphs 1-3 of example 1.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

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02-07-04